IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NOS. 3 AND 4 OF 2003.

CRIMINAL WRIT PETITION NO. 3 OF 2003.

Jamnadas Morarjee & Co.,
having office at 203/204,
Stock Exchange Tower,
Dalal Street, Fort,
Mumbai. ... Petitioner.

Versus

1. Dempo Mining Corporation Ltd., having its registered office at Dempo House, Campal, Panaji, through S. Srinivasan, Vice President, Finance.
2. Jamnadas Morarjee Finance Pvt. Ltd., (deleted)
3. Argus Investments Pvt. Ltd., having its office at 56, Marine Drive, Firdaus, 2nd Floor, Flat No. 9, Mumbai.
4. Dushyant Dave, r/at Surya Kiran, Bhaidas Maganlal Road, Kemps Corner, Mumbai.
5. Hemantkumar Navinchandra Kampani, r/at 9 and 10 Firdaus, 2nd Floor, 56, Marine Drive, D. Road, Mumbai.
6. Jamnadas Morarjee Securities Ltd., having its office at 203/204, Stock Exchange Tower, Dalal Street, Fort, Mumbai. ... Respondents.

CRIMINAL WRIT PETITION NO. 4 OF 2003.

Jamnadas Morarjee Securities
Ltd., having its office at
203/204, Stock Exchange Tower,
Dalal Street, Fort, Mumbai. ... Petitioner.

Versus

1. Dempo Mining Corporation Ltd., having its registered office at Dempo House, Campal, Panaji, through S. Srinivasan, Vice President, Finance.
2. Jamnadas Morarjee Finance Pvt. Ltd., (deleted)

3. Argus Investments Pvt. Ltd., having its office at 56, Marine Drive, Firdaus, 2nd Floor, Flat No. 9, Mumbai.
4. Dushyant Dave, r/at Surya Kiran, Bhaidas Maganlal Road, Kemps Corner, Mumbai.
5. Hemantkumar Navinchandra Kampani, r/at 9 and 10 Firdaus, 2nd Floor, 56, Marine Drive, D. Road, Mumbai.
6. Jamnadas Morarjee & Co., having office at 203/204, Stock Exchange Tower, Dalal Street, Fort, Mumbai. ... Respondents.

Mr. S.G. Dessai, Senior Advocate with Mr. D.V. Patkar, Advocate for the Petitioner in both Petitions.

Mr. Menino Teles, Advocate for the Respondent No. 1 in both Petitions.

Mr. Yogesh Naik, Advocate for the Respondents 3, 5 and 6 in both Petitions.

Mr. Joseph Vaz, Advocate for the Respondent No. 4 in both Petitions.

Coram : P.V. HARDAS, J.

Date : 1st March 2004.

ORAL JUDGMENT.

These two petitions have been filed by the original accused in Criminal Case No. 217/2000/C pending on the file of the Judicial Magistrate, First Class, Panaji, Goa, questioning the correctness of the Order passed by the trial Court, dated 30th October 2002, rejecting the application for discharge filed by the petitioners. These petitions also pray for quashing the Order, dated 27th February 2001, passed by the trial Court issuing process against the petitioners.

2. Criminal Writ Petition No. 3 of 2003 is filed by the original accused no. 5 while Criminal Writ Petition No. 4 of 2003 is filed by the original accused no. 6. The other accused have been joined as respondents in the petitions and are represented by their respective counsel.

3. At the hearing of the petitions Mr. Dessai, the learned senior counsel appearing on behalf of the petitioner in both the petitions, placed on record the xerox copy of the certified copy of the verification statement, dated 20th January 2001, of one Shivaram Srinivasan, who deposed on behalf of the complainant. The xerox copy is marked as 'X' for the purpose of identification. This xerox copy was issued to the accused on 23rd July 2001. In the said xerox copy portion at internal page 7, which reads as follows: "We did not want that the acc no 1 & 3 should use our Funds in such a manner but they were directed to use our funds in such a manner as such as purchase of shares of Vera Laboratories or Re discounted of dis-honoured bills" remains unaltered. The accused thereafter applied for a certified copy of the verification statement and received the same on 12th November 2002. That copy is marked as 'X-1'. In the copy 'X-1', at internal page 7, the portion referred to above by me appears to have been scored off. The scoring of the said portion is

initialled. Apparently it seems when the first copy marked 'X' was issued to the accused, the said portion had not been scored off. The copy at 'X' had been obtained by the accused after the learned trial Court had, by its Order, dated 27th February 2001, issued process against the accused. In the subsequent copy obtained by the accused in November 2002, which is marked 'X-1', the portion appears to have been scored off, which is initialled. It is prima facie apparent therefore that the deposition of the witness has been tampered with. Certain portion from the verification statement has been scored off. Mr. Dessai, therefore, submits that the Order issuing process, in the face of this serious charge of tampering with the record, is unsustainable and, therefore, deserves to be quashed and set aside.

4. I had called for the records and proceeding of the case and from a perusal of the same it transpires that in the original deposition certain portion from the testimony of P.W.1 has been scored off. The discrepancy in the two certified copies is, therefore, irreconcilable. Prima facie it is clear the certified copy marked 'X' was issued after the Order issuing process was passed. In that copy the portion does not appear to have been scored off. In the copy obtained subsequently, the portion appears to have been scored

off.

5. In the face of such prima facie finding, as recorded by me, the Order issuing process to the accused, on the face of the tampered deposition of P.W.1, is wholly unsustainable in law. Though the other accused have not questioned the correctness of the Order issuing process against them, the Order against such accused also will have to be quashed. The case will have to be remitted to the learned trial Court for recording afresh the verification statement and for proceeding further in accordance with law.

6. Accordingly, Criminal Writ Petitions are allowed. The Order impugned in the present petitions, dated 27th February 2001, issuing process against the accused in Criminal Case No. 217/2000/C, is, hereby, quashed and set aside. The matter is remitted to the learned trial Court for recording the verification statement of the complainant/its witnesses afresh and to proceed thereafter in accordance with law. It is made clear that the Order issuing process is also quashed against the accused, who have not filed petitions. Since the Order issuing process is quashed, it is not necessary to quash the Order, dated 30th October 2002, rejecting the application for discharge filed by the petitioners. Accordingly, rule is made absolute in

terms of prayer Clause (b) to the extent indicated above with no order as to costs. Records and proceeding be sent to the learned trial Court. Registry to preserve the xerox copies marked 'X' and 'X-1'.

(P.V. HARDAS)
JUDGE.

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